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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 449

**A QUANTITY OF COPIES OF BOOKS, HAROLD
THOMPSON AND ROBERT THOMPSON,
d/b/a P-K NEWS SERVICE,
Appellants,**

vs.

**STATE OF KANSAS,
Appellee.**

**APPEAL FROM THE SUPREME COURT OF THE STATE OF
KANSAS.**

BRIEF FOR THE APPELLEE

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BRIEF FOR THE APPELLEE

OPINIONS BELOW

The opinion of the Supreme Court of Kansas, affirming a judgment that the material here involved is obscene, is reported at 191 Kan. 13, 379 P.2d 254. The trial court's memorandum opinion is unreported but is set out in full in the opinion of the Supreme Court of Kansas.

QUESTIONS PRESENTED

I

Is this paperback pornography obscene and therefore not protected by the First and Fourteenth Amendments?

II

May the trier of fact measure the publication against what he knows to be the community standards, or must the state prove the standards by objective evidence?

III

Are the standards of the "community" those of society at large or those of a defined geographical area?

IV

Under the United States Constitution, is a jury the exclusive tribunal authorized to determine whether or not a publication is obscene?

V

Is the procedure employed in this case a valid method of preventing the distribution of obscenity?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First and Fourteenth Amendments to the Constitution of the United States, and G.S. Kan., 1961 Supp., 21-1102 and 21-1102c, are all set out in the appendix to appellants' brief.

STATEMENT

This is an appeal by Harold and Robert Thompson, doing business as the P-K News Service, Junction City, Kansas, from a decision of the Kansas Supreme Court, which affirmed a judgment by the District Court of Geary County, Kansas, that all copies of thirty-one different "Nightstand" booklets found on their premises are obscene, and ordering their destruction.

The action was commenced with the filing of an information in the District Court by William M. Ferguson, Attorney General of Kansas, on July 25, 1961. The information set out the titles of fifty-nine "Original Nightstand Books," styling them as defendants. It stated that the P-K News Service possessed these booklets or kept them for sale, and that they were obscene and in violation of Chapter 186, Laws of Kansas, 1961 (G.S. Kan., 1961 Supp., 21-1102) (R. 35-36). The information was verified by the Attorney General upon information and belief. Before signing it, the Attorney General acquired and read seven of the titles (R. 19).

Seven of the listed titles, together with the verified information, and a copy of *Marcus v. Search Warrant*, 367 U.S. 717 (1961), were furnished to the District Judge at his home at 5:00 p.m. on the same day (R. 19, Tr. A-31).¹ There were penciled references to certain sections contained in these books (R. 19). The Judge scrutinized these booklets (R. 3), and made notations of his own (R. 24). At 8:30 that evening, after a 45-minute *ex parte* hear-

1. References to "R." are to the printed transcript of the record. References to "Tr. A" are to the reporter's transcript of testimony taken on August 7, 8 and 11, 1961, which is bound in one volume and filed with this Court.

ing, the Judge stated that these seven appeared to be obscene, and further that there were reasonable grounds to believe that any paperback "Original Nightstand" titles which were listed in the caption of the information were likewise obscene (R. 319). He ordered that a warrant issue directing seizure of all copies of the titles listed in the caption of the warrant, which were the same listed in the information (R. 3, 4). Pursuant to this warrant on July 26, 1961, the sheriff seized copies of thirty-one of the listed titles, and no others (R. 35, 5, 6). A total of 1,715 copies were seized (R. 5, 6). At the same time, a copy of the warrant, containing a notice of hearing for August 7, 1961, was left at the P-K News Service (R. 5).

On August 7, 1961, the day named for trial on the merits, Harold and Robert Thompson, as owners of the booklets, filed a motion to quash the information and warrant, asserting that the statutory definition of obscenity was unconstitutionally vague and that the statutory procedure for seizing obscene material was violative of the Fourteenth Amendment (R. 7). Evidence and argument were heard on this motion the same day (R. 15). On the next day, August 8, 1961, the interveners filed a motion for continuance which was granted, and the case was set for hearing on the merits on September 14, 1961 (R. 9, 15). On August 11, 1961, the court overruled the motion to quash. In so doing, he indicated that he was familiar with *Marcus v. Search Warrant, supra*, and that in his opinion the procedure followed in seizing these books met the objections set forth in that case (R. 22-24). On September 6, 1961, the interveners filed a motion for jury trial, which after argument, was overruled by the court on September 11, 1961 (R. 10, 15).

The trial on the question of obscenity began on September 14, and lasted two days (R. 15-16). A copy of each

title seized was introduced into evidence and admitted over objection of interveners. A demurrer to the evidence, on the ground that the state had not introduced evidence as to contemporary community standards was overruled (R. 25). Intervenors then introduced thirty-one works of literature, twenty-nine of which came from the Junction City Public Library (R. 26-28).

The balance of intervenors' evidence was testimony by purported expert witnesses making comparisons between these literary works and the seized booklets. It indicated that there was an absence of four-letter words in the latter although these words appear in the books found in the library; that a description of or reference to the sex act occurs about every ten pages in the seized booklets; that passages from the literary works exceed in candor the descriptions of sex found in the seized booklets; that there are parts of these booklets which do not relate to sex; and that all of these booklets contain some kind of plot (R. 28-34). Intervenors did not present their witnesses as average members of the community. Three of their four witnesses held graduate degrees. The three librarians who testified indicated that none of the seized booklets was in any of their libraries (R. 28-34).

On September 19, 1961, the trial court in a memorandum decision found all of the seized booklets to be obscene and ordered their destruction (R. 16-18). On appeal to the Kansas Supreme Court, the findings and conclusions of the District Court were affirmed in an opinion filed March 2, 1963. From that decision, the intervenors have taken this appeal.

SUMMARY OF ARGUMENT

This case involves the business of smut peddling. This appeal presents two basic questions. First, whether or not the material seized is obscene; and second, whether or not government may restrain the publication of obscenity.

1. Although the definition of obscenity has been stated in many different ways, in substance these statements all amount to the same thing—as this court recognized in *Roth v. United States*, 354 U.S. 476 (1957). The essential question is two-fold, and may be put as follows: (a) does the material deal with sex? and (b) does it do so in a manner offensive to generally accepted standards of decency?

2. The booklets involved here constitute hard-core pornography. They have all the attributes found in such pornography, except some of the four-letter words. The standardization of format, titles and length in these booklets show clearly that they are part of a mass-production industry, which has repackaged hard-core pornography and aimed it at a new and larger market.

3. The test for obscenity functions very much as does the standard of care: in each case a hypothetical man is used as the norm. In obscenity cases, this norm is the man with average community attitudes. (a) As in negligence cases, the trier of fact constructs the norm using the totality of his experience. The parties may desire to put in "evidence" as to what are community standards, but this evidence is really in the nature of argument. It cannot bind the trier of fact; and the state cannot be required to produce it. (b) The word "community," as used

in the test for obscenity, refers to a broad objective standard which is formulated by using an average of all the attitudes known by the trier to obtain in society at large. Geography plays no part in the definition of obscenity, just as it plays no part in the formulation of a standard of care. *Roth*, the Kansas statute, and the courts below all employed the word "community";² and they all used it, as it must be used, to denote not a geographical entity but an average of all the attitudes within the trier's experience.

4. In determining community standards, the trier of obscenity must refer to his knowledge of the various attitudes, current in the community, not to his personal opinion. A judge possesses this knowledge equally with a jury, since he lives in the same community and has the same knowledge of its attitudes which jurors have. It follows that the question whether obscenity is to be tried by a judge or a jury, is one of policy, to be left to the state. The Federal Constitution has never been thought to govern the distribution of functions between judge and jury in state courts. Furthermore, the appellants' argument for a right to jury trial depends on the premise that only a jury is competent to decide community standards. This premise is fundamentally inconsistent with established principles of judicial review in free speech and obscenity cases.

5. The Kansas statute is not a licensing or censorship scheme, requiring prior governmental approval before publication. The seizure now being litigated was effected only after the publication of allegedly obscene booklets, and it was designed to restrain further publication of the same material. The procedure followed was fashioned with

2. Appellants state repeatedly in their brief that the trial judge applied the standards of "Junction City, Kansas." This, however, is a misstatement of the record (See R. 17).

Marcus v. Search Warrant, supra, uppermost in the minds of both prosecutor and judge. Thus the court scrutinized and exercised its independent judgment on the obscenity of the material before any restraint occurred. The seven titles he had before him were completely alike in length, basic content, title and obvious purpose. Concluding that these were probably obscene, he was inescapably drawn to the conclusion that the "other Nightstand Books" with virtually identical titles, named in the back of these seven, were exactly the same in nature. Also, in keeping with the court's objections in *Marcus*, the magistrate directed the warrant only at specific titles, leaving the executing officers no discretion whatsoever in deciding what they were to search for and seize. The total delay occasioned by the state procedure from seizure to final decision was sixteen days, which is not excessive when applied to material claimed to have lasting, not periodical, value.

ARGUMENT

Introduction

In *Roth v. United States*, 354 U.S. 476 (1957), this Court held that obscenity is not constitutionally protected speech. The Court summed up the modern case-law definition of obscenity, saying:

"Obscene material is material which deals with sex in a manner appealing to prurient interest."

The opinion quotes the dictionary definition of "prurient," which is:

"Itching; longing; uneasy with desire or longing; of persons, having itching, morbid, or lascivious longings; of desire, curiosity or propensity, lewd."

Although many different statements of the definition of obscenity have been suggested, in substance they all amount to the same thing:.. Obscenity (1) deals with sex, and (2) it deals with it in a manner which offends generally accepted standards of decency. Under every statement of the test, the question is whether the material goes beyond what Judge Learned Hand called "the present critical point in the compromise between candor and shame at which the community may have arrived here and now." *United States v. Kennerley*, 209 Fed. 119, 121 (S.D. N.Y., 1913). There are other ways of saying it. The trial judge in *Roth* told the jury to decide whether the material offended "the common conscience of the community by present day standards." The opinion of this Court in *Roth* used the phrase "appeal to a prurient interest." The American Law Institute adds the requirement that the material exceed "customary limits of candor." Model Penal Code, Proposed Official Draft, §251.4(1) (1962). In another part of the *Roth* opinion, the test is stated to be whether, "to the average person, applying contemporary community standards," there is a "prurient appeal." Other phrases often employed are "lustful thoughts," "lewd thoughts" or "lascivious thoughts." But all of these tests are alike in substance, as this Court recognized in *Roth*. While we do not mean to propose an exclusive statement, we think the essential question may be put as follows: Does the material deal with sex in a manner offensive to generally accepted standards of decency?

It should be added that this Court also held in *Roth* that, in order to protect material legitimately treating with sex, two added safeguards must be followed in applying the definition. First, the material must be judged as a whole, not by isolated passages. Second, it must be judged by its effect on all who might see it, not by its effect on the most susceptible persons.

I. The Books Which Are the Subject of This Appeal Are Obscene and As Such Are Not Constitutionally Protected.

This case deals with the business of smut peddling. These booklets fit exactly Mr. Justice Frankfurter's characterization of "dirt for dirt's sake, or more exactly for money's sake." There is no kinship here with the erotica written by Lawrence, Joyce, O'Hara, Miller, or even Wallace or Metalious.

This Court in recent years has drawn the mantle of First Amendment protection around publications with any semblance of a redeeming social consequence. Comstockery is dead—no militant prosecutor can longer restrain meaningful speech. The issue here is: where is the constitutional line which allows society to protect its basic moral fiber against license. If the line may not be drawn here, it may not be drawn at all.

The First Amendment's protection of speech and press was designed to assure the free exchange of ideas which advocate political or social change, *Roth v. United States*, 354 U.S. 476, 484 (1957). Obscenity, however, contains no such ideas; or if it does, they:

... are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. (*Chaplinsky v. New Hampshire*, 315 U.S. 568, 572 (1942).)

On the one hand, obscenity is not utterance of the kind intended to be encouraged and protected by the First Amendment; and on the other, it makes a frontal assault on the foundations of order, morality, and human dignity. The purpose of excepting obscenity from constitutional protection is to allow society to protect itself from obscenity's

debilitating effects. All the states, as well as the federal government, have statutes prohibiting obscenity; and these statutes are founded on the strongly felt conviction that obscenity contributes to the incidence of crime and sexual license. See Report of Subcommittee on Juvenile Delinquency, S.R. 2381, 84th Cong., 2d Sess. 17-23, 60-66. Sexual license, in turn, can undermine the very physical health of a society, as a distinguished group of Swedish doctors has recently pointed out. *Time Magazine*, March 6, 1964, p. 35. From the point of view of individual dignity, it is significant that in George Orwell's *Nineteen Eighty-Four*, the dictatorship mass-produces obscenity in order to keep the proles (people) morally degenerate and hence unable to revolt. These two concepts, (a) the total lack of ideas and (b) the threat to society, are the foundations of Roth.

The booklets in this case fit the Roth rationale perfectly. They are designed solely for the purpose of stimulating the reader sexually, with no accompanying social or political ideas whatsoever. All of these booklets are divorced from reality and their main function is to nourish erotic fantasies in the reader's mind. They are marked by a daydream quality, which two leading scholars have said is a chief characteristic of obscenity, Lockhart and McClure, *Obscenity Censorship*, 7 Utah L. Rev. 289 (1961). The erotic scenes needed for these fantasies recur regularly throughout the book (R. 29) without distracting character development or philosophical discussion. This, too, is a major characteristic of obscenity. Kronhausen and Kronhausen, *Pornography and the Law* (Ballentine, 1959). As may be seen from summaries contained in the appendix hereto, most of the other attributes of obscene literature noted by the Kronhausens are also present in each book:

1. The women are as anxious to be seduced as are the men to seduce them.

2. The females are generally of the nymphomaniac type. They are almost invariably beautiful of face and possess overdeveloped figures. They have no concern whatsoever about pregnancy. Furthermore, there is no trace of modesty or remorse, or fear of venereal disease. Love is almost never mentioned.
3. Defloration is coupled with rape and sadism. The female is generally desirous of the act and obtains exotic enjoyment despite the pain. There is seldom any hostility on the part of the female who has been raped.
4. The males are generally supersexed.
5. Lesbianism is common, since it is assumed to have an erotic effect on the predominantly male audience.
6. Violence and flagellation are common, almost invariably perpetrated on the females.
7. Sexual orgies involving several persons of both sexes are common.
8. Cunnilingus and fellatio occur, as does sodomy per anus. Incest is also present.

This erotic material is hung on an extremely rudimentary plot. The whole is then mass-produced by an industry based on the "commercial exploitation of the morbid and shameful craving" for such materials (*Roth v. United States*, 354 U.S. 476, 496 [concurring opinion of Warren, C.J.]).

The size and nature of this industry become apparent from an examination of the 31 titles involved here. Each is almost exactly the same length. (Sixteen titles have 190 pages, eleven have 191 pages, two have 192 pages, and one has 189 pages). The names of only eleven authors appear among the 31 titles. The titles of the books are standardized:

Born for Sin
 Sin Girls
 Sin Hotel
 Sin Camp
 Sinning Season
 Sin Song
 Sinful Ones
 Sin Cruise
 Seeds of Sin

Sex Jungle
 Sex Model
 Sex Spy
 Sex Circus

Lustful Ones
 Lust Goddess
 \$20 Lust

On the front fly leaf of each book the publisher seeks to whet the erotic appetite with headings such as:

Sex-Hungry Girl
 I'm a Lesbian
 The Price of Sex
 Whose Lips on Her Body
 Hot Pants Marion
 Give Me Your Body
 Lustsated Couples

Similar eye catchers are printed on the back, with such headings as:

Passion Gone Berserk
 Come Sleep With Me
 Unnatural Sex
 A Loose Woman
 Lusty Holiday
 Problems in Bed
 Once a Virgin
 My Mistress and My Son

On the back fly leaf of each book is printed a long list of "Other Nightstand Books."

What we have here is not speech, but a business. The potential for mass-production in this business is shown

by the standardized quality of the books seized, as well as by their number. Seventeen hundred fifteen copies of 30 titles were found in the hands of a single distributor in Junction City, Kansas. Furthermore, booklets identical in format, and basic content, and bearing the same authors' names are distributed under the brands of Pillar Books, Ember Books, Leisure Books, and Midnight Reader Books.

The obscenity industry as a whole was estimated in 1956 to be a half-billion dollar per year business. Report of Subcommittee on Juvenile Delinquency, S. R. 2381, 84th Cong., 2d Sess. 3. was already at that time keeping pace with modern developments in mass communications, *Id.*, at 5. The Kefauver Subcommittee noted then that the readers of obscenity, once they begin, constantly demand something stronger; and that the publishers must supply a given buyer with progressively more jolting doses, in order to hold his business, *Id.*, at 8. In 1956, this industry operated largely in a surreptitious manner. Today, however, as evidenced by the books before this Court, it has begun to come out of the back alleys and onto the legitimate newsstands. See Amory, "Paperback Pornography," Saturday Evening Post, April 6, 1963, p. 10. The publishers have taken aim at a new and much larger market, composed of persons who previously had no exposure to obscenity. To capture this market they have packaged their product to look like ordinary paperback books. They have omitted some of the four-letter words, and they have inserted a semblance of a plot. The dominant theme, however, remains the same, namely, to nourish erotic fantasies; and all the usual attributes of surreptitious obscenity are present.

This is an ancient product in a new package. Once this merchandise gains a foothold among this new and

much larger segment of the public, the publishers will follow their well-known pattern of increasing the strength of the dosage. Group orgies, cunnilingus, fellatio, sodomy, sadism, masochism and rape will appear in more depraved and violent display.

The business represented by these books plays no part in the search for truth and wisdom. The arguments of Milton, Jefferson and Mill were never intended to justify displays of sex and sadism. Jaffe, Book Review, 41 Minn. L. Rev. 239, 240-1 (1957). In protecting itself against the owners of this business, society in no way interferes with the free interchange of ideas which the First Amendment seeks to protect.

II. The Function of the Community Standards Test Is Analogous to That of the Prudent Man Test.

In *Roth* this Court held that obscenity is not constitutionally protected speech and announced as a standard for judging obscenity:

whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest. 354 U.S. at 489.

In this statement, *Roth* summed up the holdings of a long line of federal and state cases, many of which are cited in footnote 26 of the opinion. It is in the tradition of these cases that *Roth* was decided; and it is in the perspective of these cases that *Roth* should be understood and elaborated.

Specifically, *Roth* and these earlier cases state a test for obscenity which functions very much as the standard of care functions in negligence cases. The analogy to the standard of care was first pointed out by Judge Learned

Hand in *United States v. Kennerley*, 209 Fed. 119 (S.D. N.Y., 1913). Judge Hand elaborated the analogy in *United States v. Levine*, 83 F.2d 156 (2d Cir., 1936); and it was also pointed out by Judge Woolsey in *United States v. One Book Called "Ulysses,"* 5 F. Supp. 182 (S.D. N.Y., 1933).

Both the question of negligence and the question of obscenity are confided to the trier of fact in the first instance; even though they both involve the application of law to fact. In each case, the trier must construct a hypothetical person to be used as a norm; and by this norm he judges the propriety of the conduct which is in dispute. In negligence cases, this norm is the reasonably prudent man. In obscenity cases, it is the man with average community attitudes. If the material deals with sex in a manner offensive to this representative man, then the trier should find it legally obscene.

A. Community Standards Are Not an Objective Fact Which the State Must Prove.

In negligence cases, the reasonably prudent man is constructed from the everyday experience of the trier of fact. When there is a jury, a standard instruction tells the jury to use its own experience; and a judge sitting alone uses his experience in the same way. There is no requirement that the parties submit proof as to the standard of care, and ordinarily they do not. They will probably make vigorous oral argument as to what a reasonable man would have done; but that is because a question requiring application of law to fact is being decided.

The trier of obscenity, in constructing a standard, must likewise consult his own experience as a member of the community. The parties may desire to submit "evidence" as to what is the average community response to the al-

legedly obscene material. But this evidence is really in the nature of argument. As argument, it may in some cases be persuasive. But it can never be binding on the trier of obscenity. Nor can the state be required to submit such evidence. As Judge Hand put it in *Levine*, such evidence may sometimes be helpful, but "in the end it is the [trier of obscenity] who must declare what the standard shall be." 83 Fed. at 158.

The view that the trier of obscenity consults his own experience has been followed throughout the history of litigation in this area. In *Roth* itself, this Court approved a charge to the jury which said:

In this case, ladies and gentlemen of the jury, you and you alone are the exclusive judges of what the common conscience of the community is, and in determining that conscience you are to consider the community as a whole . . . 354 U.S. at 490.

This charge completely rejects the proposition suggested by appellants that the community standard is an objective fact which the state must prove. Appellants cite no cases in support of that proposition; and there are no such cases. In fact, Mr. Justice Harlan expressed an assumption running through the entire case law when he said that the state may regard "the trier of fact as the embodiment of community standards." *Smith v. California*, 361 U.S. 147, 171 (1959) (Separate opinion). Even the appellants recognize that this is the role of the factfinder, when they argue that a jury must decide obscenity because only a jury knows from its experience what the standards of the community are.

To say the trier of obscenity may consult his own experience is not to say he may impose his personal standard on the material in question. He must decide, from his

experience as a member of the community, what he thinks the average person's response to this material would be. In making this decision, he may be aided by argument or evidence, but he cannot be confined to it; and the state cannot be required to produce it. The average man is not an objective fact, but a legal standard which the trier of obscenity must formulate in each case.

B. The Standards of the "Community" Are Those of Society at Large, Not Those of a Defined Geographical Area.

The *Roth* case, as noted above, uses the response of the "average person, applying contemporary community standards." The statute under which a finding of obscenity was made in this case contains virtually identical language, i.e. the "impact upon the average person in the community." It also incorporates a phrase from the charge approved in *Roth*, i.e. "the common conscience of the community." G.S. Kan., 1961 Supp., 21-1102(b). Following both the *Roth* case and the statute, the trial judge stated the standard to be the "effect on the average person residing in this community" (R. 17).³

The use of "community" in the test for obscenity appears to have begun with the opinion of Judge Hand in *United States v. Kennerley*, in which he asked:

Should not the word "obscene" be allowed to indicate the present critical point in the compromise between candor and shame at which the community may have arrived here and now? 209 Fed. at 121.

Later, in *United States v. Levine*, Judge Hand reiterated that the question is "the standing of the works in the minds

3. In their brief, appellants quote the trial judge as saying he used the standards of "Junction City, Kansas." This is a misstatement of the record.

of the community." 83 F.2d at 158. In the *Roth* case itself, the trial judge instructed the jury:

You may ask yourselves does it offend the common conscience of the community by present day standards? 354 U.S. at 490.

As we noted earlier, the view taken in each of these cases is that the trier of fact constructs a standard for judging obscenity from his experience, just as he does in a negligence case. "These cases use the word "community" to emphasize that the trier is not to apply his personal view even though it is derived from experience, but is to employ an objective standard using his experience among all kinds of people. As the trial judge said to the jury in *Roth*:

[Y]ou are to consider the community as a whole, young and old, educated and uneducated, the religious and the irreligious—men, women and children. 354 U.S. at 490.

"Community," as used in these cases, does not refer to a geographical unit of any kind. Geography plays no part in the definition of obscenity, just as it plays no part in the formulation of a standard of care. Nor can it play any part, for experience does not come in neat geographical packages. It is manifold, encompassing knowledge of attitudes derived from family, travel, school, military service, mass media and business. It is this experience which the word "community" seeks to capture, in order to insure that a broad and objective standard will be used in judging obscenity.

This is the sense in which "community" is used in the cases leading up to *Roth*. Since *Roth* summarized these cases, we assume that it used the word in exactly the same sense. The "average person, applying contemporary community standards," is not a standard linked to geographical

boundaries. The trier must, of course, consider the material as a whole; and in judging its appeal, he must not concentrate on groups inordinately susceptible to sexual stimulation. Within these two guidelines, he must decide whether the material deals with sex in a manner offensive to the "average person," who is a distillation of all he knows about the attitudes of people of all kinds.

Roth, then, does not employ a geographical standard. Nor does the Kansas statute, which incorporates the language of *Roth*. The judge who made a finding of obscenity in this case follows the *Roth* case and the statute, in the language of his opinion. All three use the word "community;" and they all use it, as it must be used, to denote not a geographical entity but an average of all the attitudes within the trier's experience.

III. The First Amendment Does Not Require the State to Afford a Jury Trial on the Question of Obscenity.

Appellants argue that a jury must decide the question of community toleration, because only a jury "represents" public opinion. A judge, it is said, represents only his own class or group; but a jury contains representatives from many groups. This assumes, however, that the question of standards is to be answered by the trier's personal opinion. The gist of the argument is that twelve opinions are more likely to approach the community average than one. This completely misconceives the function of the trier of obscenity. He must apply his knowledge of community attitudes, not his personal opinion. *Smith v. California*, 361 U.S. 147, 171 (1959) (separate opinion of Harlan, J.). The standard is a hypothetical average. No twelve personal opinions could possibly be representative of the entire community's attitudes, in any case.

If it is not opinion but knowledge of attitudes that counts, then a judge possesses this knowledge equally with

a jury. He lives in the community, just as jurors do. He knows the attitudes of society at large at least as well as they do. Furthermore, the question of obscenity involves the application of a legal standard to a group of facts; and this is a task within the peculiar competence of judges. Even the question of negligence, which is normally for a jury, is often decided by a judge sitting alone. In fact, it has been suggested that judges will be more circumspect than juries in deciding whether a given book is obscene and hence constitutionally unprotected. See Bickel, *The Passive Virtues*, 75 Harv. L. Rev. 53 (1961).

We do not suggest that either a jury or a judge is superior, but that the choice between them is one of policy, to be made by the state. The First Amendment cannot be said to render either one incompetent to decide the question. In this connection, we point out that the Federal Constitution has never been thought to govern the distribution of functions between judge and jury in the state courts, *Chicago, Rock Island & Pacific Ry. Co. v. Cole*, 251 U.S. 54, 56 (1919). The jury trial guaranties of the Sixth and Seventh Amendments are not incorporated in the Fourteenth, *Fay v. New York*, 332 U.S. 261, 288 (1947); and there are no decisions of this Court, in any kind of case whatsoever, holding that the Federal Constitution requires a jury in a state court.

There is a further reason for rejecting appellants' argument that a jury is constitutionally required. Their argument depends on the premise that only a jury is competent, under the First Amendment, to decide the extent of community toleration. It would follow from this that a judge is constitutionally incompetent to decide the question. But community toleration is a constitutional standard. *Roth v. United States*, 354 U.S. 476 (1957). If material does not meet this standard, it may be suppressed; if it

does, it is constitutionally protected. As a constitutional question, community toleration must ultimately be decided by the court on appeal. *Manual Enterprises v. Day*, 370 U.S. 478, 488 (1962) (separate opinion of Harlan and Stewart, JJ.); *Grove Press v. Christenberry*, 276 F.2d 433, 436 (2d Cir. 1960); *Zeitlin v. Arnebergh*, 59 Cal. 2d 901, 908-910 (1963); *People v. Richmond County News*, 9 N.Y. 2d 578, 580-81 (1961).

This is in line with other free speech decisions of this Court. Whenever the speech being punished is claimed to be protected by the First Amendment, this Court makes an independent application of First Amendment standards to the record before it. *Edwards v. South Carolina*, 372 U.S. 229, 235-6 (1963); *Niemoiko v. Maryland*, 340 U.S. 268, 271 (1951); *Feiner v. New York*, 340 U.S. 316 (1951). The Court, in reviewing an obscenity case, should follow the same rule; otherwise, "it would be abdicating its role as an arbiter of constitutional issues." *People v. Richmond News*, 9 N.Y. 2d at 581.

However, if the question of community toleration is decided by the Court, as it can and should be, then it simply cannot be said that judges are incompetent to determine the extent of that toleration. Presumably, this Court made such a determination itself in the four *per curiam* decisions of 1957, which reversed findings of obscenity (*Times Film Corp. v. Chicago*, 355 U.S. 35; *Mounce v. United States*, 355 U.S. 180; *One, Inc., v. Oleson*, 355 U.S. 371; *Sunshine Book Corp. v. Summerfield*, 355 U.S. 372). Both parties in the case at bar argue the question of obscenity on the assumption that this Court is competent to decide community standards. Appellants' argument for a jury trial of right in obscenity cases is fundamentally inconsistent with the established principles of judicial review in such cases.

IV. The Procedure Followed in This Case Is a Valid Method of Preventing the Distribution of Obscenity.

The Kansas seizure statute is not a licensing or censorship scheme, covering all publications, but is only directed at those threatened publications sworn to be probably obscene. Not all books are required to be submitted or approved prior to publication, nor may all be seized. The seizure now being litigated resulted from the purchase of a number of booklets at retail—after publication (R. 19). Under the procedure employed here, preventive measures were initiated only when the state became aware of the obscene nature of the publication after the fact of publication. The effect of the seizure was not to restrain publication before the offense, but to restrain further publications once their nature had been demonstrated.

Appellants had published a number of volumes, obscene in the eyes of the State, and threatened to continue publishing them and other works of the same nature. The State determined that the most effective remedy would be to prevent further publication, rather than merely to punish for the past publications. In Kansas, the preventive remedy available was the seizure statute in question.

Kansas' problem, then, was to follow the course marked off by *Kingsley Books, Inc., v. Brown*, 354 U.S. 436 (1957), avoiding the pitfalls of *Marcus v. Search Warrant*, 367 U.S. 717. Certainly, as regards material claiming First Amendment protection, extraordinary procedural safeguards are required, *Kingsley Books, supra*. The State of Kansas would be satisfied with no less.

Viewing the procedure employed here in the light of that found objectionable in *Marcus v. Search Warrant*, it must be remembered that the enabling legislation was passed by the Kansas legislature in April, 1961, while

Marcus was decided in June of the same year. The procedure employed, however, was fashioned with *Marcus* foremost in the minds of both prosecutor and judge. A copy of the *Marcus* opinion was furnished to the judge along with the information (Tr. A-31). Thus, in meeting the specified objections in *Marcus* the trial court: (1) had before it, scrutinized and exercised its independent judgment on the obscenity of the material before any restraint took place; (2) directed the warrant only at named material—no catch-all restraint was imposed against all “obscene” material; (3) afforded a speedy trial on the issue of obscenity to appellants and their publications.

On the first point, appellants complain that the magistrate had insufficient time before issuing the warrant to do more than “scrutinize” the offending books. That term was employed by the judge (R. 3), obviously borrowed from *Marcus*, 367 U.S. at 732, to meet the objection that the material there had been seized “without any scrutiny by the judge of any materials considered by the complainant to be obscene.” Seven titles had been in the judge’s possession for three hours prior to the 45-minute hearing, at the conclusion of which he determined that the books were probably obscene and that a warrant should be issued (R. 3, 19).

It is also contended that, from the material before the magistrate, he could not reasonably conclude that the other specific titles mentioned were also obscene. The pattern before the judge was clear. He had before him seven booklets, as alike as peas in a pod, in length, basic content, title, and obvious purpose. At the end of each was a list of other titles bearing the same brand, with the suggestion that the reader of one would also enjoy the others. Could the judge reasonably infer that, if the booklets before him were obscene, these others were probably also obscene? The book-

lets' titles, of course, necessarily betrayed the nature of their contents. Thus we had "Sin Camp," "The Isle of Sin," "Sin Cruise," "Seeds of Sin," and "The Sinful Ones." The titles also prominently featured "Lust," "Sex," and "Orgy." Each volume before the judge proclaimed that it was "an original Nightstand Book" and advertised that the other volumes were also "Nightstand Books." To the examining magistrate there was presented no reason to suspect that there might be a literary gem amongst this utterly crude ore, and appellants do not now claim there was one. The inference that the other volumes listed were of the same character as those presented to the court was not only reasonable but inescapable.

Appellants would also have this Court believe that there was a general warrant issued, thus attempting to come within the terms of *Marcus*. The record is clear, however, that 59 specific titles were listed in the information and warrant and that 31 of these 59 were found and seized (R. 35, 5-6). The officers executing the warrant had absolutely no discretion as to what they were looking for or what they were to seize, and they exercised none.

On the third point, appellants make much of the fact that the Kansas statute contains no *requirement* that there be a speedy determination. In setting a trial date, there would appear to be two conflicting interests to be accommodated. First, action must not be so precipitous as to deny a claimant the opportunity to defend his publication and make adequate preparation for the hearing on obscenity. Secondly, the decision on the ultimate issue must not be delayed so as to destroy any value the material may have if it is of only current interest, and if it is determined to be non-obscene. Resolving this conflict, the Kansas legislature decreed that the hearing should be not less than ten days from the seizure. In the case at bar, it was

twelve. There was some further delay, but only at the instance of the appellants (R. 9, 15), and the decision on obscenity was rendered four days after the termination of a two day trial (R. 16). The total delay occasioned by the state procedure, from seizure to determination, thus amounted to sixteen days. This can hardly be deemed excessive when applied to material claimed to have lasting entertainment value.

It has been suggested that the seizure remedy used here should not be given the same constitutional status as the temporary injunction approved in *Kingsley Books, Inc., v. Brown*, 354 U.S. 436 (1957). In fact, however, these two remedies vary, if at all, only in efficiency and not in quality. Publication in violation of a temporary injunction necessarily subjects the publisher to punishment for contempt. The non-obscenity of the published material cannot be made a defense to a contempt prosecution. If it were, the court's injunctive process would be totally undermined. It is a universal rule that the correctness of a court's order cannot be attacked in contempt proceedings, so long as the court issuing the order had jurisdiction over the parties and subject matter. *E.g., United States v. United Mine Workers*, 330 U.S. 258, 293 (1947). The *in terrorem* effect of the contempt sanction, therefore, serves exactly the same purpose as seizure—to prevent further publication. The threat of jail is no less efficient for that purpose than seizure.

Finally, appellants suggest that the verification of the information "on information and belief" renders it fatally defective. This argument ignores the facts in the case, which include the production before the magistrate of the sample volumes themselves, the magistrate's preliminary determination that they were obscene, and the evidence concerning where they were obtained (R. 3, 19). The is-

suance of a warrant under the Kansas statute requires a showing of three elements, that the material is obscene, that it is held for sale, and the place where it is held. To require a complainant to swear to all of these elements positively would be to require the impossible. In the nature of things, if the courts are to have the final say, a complainant can only say that he *believes* these elements exist. To justify seizure, the court, on the basis of the evidence before it, determines whether that belief is reasonable. Certainly a positive oath that the material is obscene could and should have no effect on either the initial decision on probable cause or the ultimate decision on obscenity.

CONCLUSION

For the above reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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APPENDIX

Here follows a brief summary of the seized booklets, with the pages of some of the obscene passages indicated. The State has included excerpts from a few of them to demonstrate the tenor of the seized books.

1. *"Born for Sin"*, by Al James, No. NB1510R.

A nymphomaniac who works her way from small town truck stop to the big city and back peddling her body.

Obscene passages are to be found at pages 12, 32, 33, 42-45, 52, 53, 65, 66, 93-95, 109, 110, 132, 147, 148, 169.

2. *"No Longer A Virgin"*, by John Dexter, No. 1513R.

This is a story of a small-town girl who lives only for those moments when men's hands, sometimes several pairs, are caressing her body, particularly her overdeveloped breasts. When she fails to reach an orgasm with the hometown boyfriend, she moves to the large city where her aspirations are many times fulfilled.

Descriptive passages:

Perfect figures—5, 8, 21.

Nymphomania—5, 6, 7, 10.

Defloration—7, 8.

Narcissism—10-12.

Fellatio—22.

Cunnilingus—22.

Descriptive intercourse—22, 23, 38, 118, 135, 153, 165, 189.

Lesbianism—75, 76, 77.

Sadism—81.

3. "Sin Girls", by Marlene Longmon, No. 1514R.

Leslie, a virgin, is raped and as a result becomes a lesbian and then a lesbian prostitute. On the last page, she is rescued from lesbianism by a heterosexual affair.

Descriptive passages:

Lesbian intercourse—11, 42-44, 51-53, 57, 66-68, 74-76, 151, 152, 158, 160, 177, 180.

Rape—21-24.

Sadism—77-78.

Masochism—160.

Group orgy by four lesbians—94-97.

Four lesbians rape a male homosexual—105-109.

Seduction of non-lesbian by a lesbian, ending in suicide—120-123.

4. "Sin Hotel", by Don Holliday, No. 1518R.

This is a story of mixed prostitution, lesbianism and homosexuality. Particularly descriptive passages are to be found on pages 12, 13, 15, 19, 35, 49, 53, 56, 79, 84, 90, 92, 102, 105, 117, 120, 131, 134, 168, 183. Total number of pages, 191.

5. "Miami Call Girl", by John Dexter, No. 1519R.

A small town girl becomes a high-priced Miami prostitute. She marries a homosexual attorney who sells her favors to his clients. In the end, he is killed and she marries her former pimp and lives happily ever after.

Descriptive passages:

Male sex organ and/or erection—7, 30, 32, 128, 133, 152.

Vagina and/or pubic hair—14, 130.

Incest—16-17.

A woman orgies with large group of men as her husband looks on—115-117.

A3

Descriptive intercourse—6-7, 14-16, 19, 27, 33-34, 38-42, 57-59, 68-69, 83-84, 96-97, 104-105, 128-130, 132-133, 136, 151-153, 166, 167, 170.

6. "*Lesbian Love*", by Marlene Longmon, No. 1523R.

Following her seduction by her female school teacher, the heroine tries heterosexual activities but returns to her first love, lesbianism.

Descriptive passages:

Perfect figure—5, 6.

Lesbianism—6, 7, 8, 49, 55.

Descriptive heterosexual intercourse—12, 22, 67, 149.

Homosexuality—page 116.

7. "*Sex Jungle*", by Don Elliott, No. 1524R.

This is a story of juvenile gangs in New York and the sexual activities of these gangs, with an admixture of incest.

Descriptive passages:

Intercourse

—with girl friend—8, 10, 52, 111, 132, 161, 167, 175.

—with one girl forty times in one day—45.

Orgy in which twelve couples participate—73.

Sadism—76, 161.

Rape—113, 117, 118, 120.

Masturbation of girl with an ear of corn ("She liked it")—45.

Chapter six beginning at page 73 and continuing to page 85 is a description of Golden Dragon gang initiation. The initiate is required to have intercourse with three of the gang's girls while the rest observe. Excerpts are as follows:

"I was quiet for a minute. Hell, laying three girls in a row isn't the easiest thing in the world to do. And doing it in front of a mixed audience was a bitch of a job. But we had done plenty of fooling around in the Shining Sinners. Orgies, the newspapers would call them. Ten or twelve couples all naked, doing it at the same time. That wasn't quite the same thing as what I was asked to do here. But other times we had screwing exhibitions, and me and Flora had had our turn at them while the rest of the gang and the debs stood around and watched and made bets and all. So I wasn't embarrassed by the idea, if you get me. Just a little worried. I wanted everything to work out right.

* * *

"But one rule around a gang is that the deb is her stud's property. When a caper is planned, the deb don't raise objections. Once she hooks up with a gang kid, she does what he wants. And if he wants her to strip down and lay publicly for a stranger, she does it—or else.

* * *

"'Lora first,' I said.

* * *

"Lora started to strip. She pulled her black jersey up over her head and dropped it to one side. She didn't have any bra on underneath, and her big breasts swung from side to side. They were the biggest I'd ever seen. Huge. They had little dimples in them, they were so big. They started right below her collarbone and must have gone a foot down her chest, as well as sticking out a foot.

"She stood there with those enormous boobs sticking out, and every eye in the room fastened right on her.

* * *

"I tightened on her breasts, feeling my fingers sink deep onto their spongy fatness, and I lowered my

head to her shoulder and took a bite out of her, and I drove myself deep into her . . .

"And she came alive.

* * *

"Which girl next?" Jimmy Nails asked.

* * *

"Joanne came forward. She was very nervous, I could tell. Close up, I saw that she couldn't have been much more than fourteen or fifteen at the absolute tops.

* * *

"We moved slowly at first, then faster, and I felt the tingling begin and knew that this was going to be a fast one for me, and I tried to heat her up, doing everything I could for her, only nothing seemed to get through to her.

* * *

"Somebody offered me a can of beer and I took it and drank about half of it. Then I turned, looking for Lisa. She was sitting on the couch, and when I looked at her her face put on an interesting smile. Christ, she was beautiful. Sleek and smooth and soft and satiny, and a mischievous look in her eyes.

"Come on," I said to her.

"She rose and came over to me. 'Do you want me to undress?' she asked.

"I'll undress you," I said.

* * *

"I pulled the sweater over her head. She was about five six or so, a tall girl. I took the sweater off her and unhooked her bra, bringing it forward off her breasts.

"She was built.

"Her breasts rose high and firm, and they were pale white, sort of creamy color with a glow of their own. The nipples were small and pinkish-red, and

they sat near the top of the curve, looking up at me. My hands shook a little as I put them on those two round ripe boobs of hers.

"This was plenty woman, all right. Mike Reilly had himself quite a piece.

* * *

"Her fingers wandered magically. I began to breathe harder. I had my hands on her breasts, and the nipples were stiff against my palms, and I was looking into her eyes and seeing strange flecks of gold there, and our bodies were very close and yet still I was helpless, but the excitement was growing in me, growing by the minute as she used all of her skill, and then we were kissing, her tongue like a hot dart in my mouth.

"And it began to happen.

"I don't know the exact moment. One moment I was helpless, and the next I was on fire, burning up in the flame of her body, entering her, and she was moving, doing things with the muscles inside her, and when I opened my eyes for a moment I saw her with her eyes closed and still smiling, and then her fingers were raking line down my back and she was starting to moan, and I was carried away with her as sounds started to come out of her throat and mine, and it was like this was the first time I had ever done it with a girl, and the world was full of light and I felt the shudder of delight and rockets going off inside my head, and Lisa was stiff against me, her whole body shaking with pounding delight, and I felt it flowing through me like an electric current, and it was oh and oh and oh again, the current flowing through both of us, jolt after jolt, after jolt, and we were way up far out, and then it was ending, hard as we tried to hang onto it it was ending, and down we came out of the stratosphere and it was all over, and I gasped for breath and pillowed down between Lisa's wonderful breasts and shook with exhaustion.

"I was beat.

"But I had passed the test."

His sister is also initiated. At page 105:

"All it was, was Johnny and Sis on the mattress with each other. But for me it took hours. It's a hell of a thing to watch your sister, giving an exhibition in front of a couple of dozen strangers. And Sis was good. She wasn't any scared virgin. She forgot all about the audience, and really cut loose with Johnny Slash."

8. "*The Lustful Ones*", by Clyde Allison, No. 1525R.

Theme is sex among the inhabitants of Greenwich Village. A young artist is the virile protagonist.

Descriptive passages:

Two-day orgy of intercourse and drinking by two men and two girls—157-166.

Fellatio—163.

Descriptive intercourse—20, 27, 66, 105, 108, 110, 138, 140, 160, 162, 164, 166.

9. "*The Wife Swappers*", by Andrew Shaw, No. NB-1526R.

The Story concerns a suburban sex club consisting of eight perfectly-developed, sexually insatiable couples. The erotic play during the frequent orgies includes both heterosexual and homosexual activities.

Descriptive passages:

Perfect figures—5, 59, 66.

Descriptive intercourse—18, 21, 67, 84, 93, 119.

Sadism—22, 31, 68.

Nymphomania—27, 92.

Lesbianism—39, 41, 82, 85, 119.

Perversion—80, 82.

Sodomy per anus—155.

Request for fellatio—155.

10. "*Sex Model*", by Al James, No. NB1527R.

Oklahoma farm girl becomes a prostitute in Chicago. Eventually she is shot down gang-land style.

Descriptive passages:

Intercourse by two teenagers on a bus in mid-afternoon—9-11.

Man pays a prostitute to have intercourse on same bus—30.

Descriptive intercourse—38, 47, 103, 112, 130.

Attempted rape—58-59.

Girl strips for several men—66, 83-86.

11. "*The Lecher*", by Don Elliott, No. NB1528R.

The protagonist in this story is an IBM operator who seduces a man and his son with the ardor of a nymphomaniac. Her desires are insatiable, while her playmates' abilities to perform sexually are immeasurable. Continuous intercourse is the yardstick of happiness.

Descriptive passages:

Perfect figures, descriptive nudity—7, 14, 16, 47, 58, 110.

Nymphomania—12, 13, 14, 24, 48, 124.

Descriptive intercourse—30, 31, 32, 48, 108, 124, 125.

Perversion—66.

Sadism—189.

12. "*Lust Goddess*", by Don Elliott, No. NB1544.

With a theme of nymphomania and sadism, this story describes sexual excess by supersexed males and insatiable females. The heroine is consumed with a compulsion to control all males with whom she comes in contact.

Descriptive passages:

Perfect figure and descriptive nudity—6, 9, 12, 20, 47, 73, 110.

Nymphomania—10, 19, 55, 79, 180-185.

Descriptive intercourse—20-22, 55-57, 80, 98-100, 113, 132.

Sadism—63, 141, 148, 151, 153, 176, 188.

Defloration—116.

13. "Sin Camp", by Anthony Calvano, No. NB1545.

Theme is illicit sex at an army camp.

Descriptive passages:

Prostitution—23.

Lesbianism—110.

Sadism—110, 174.

Rape—110.

Descriptive intercourse—23, 55, 76, 89, 90, 94, 119, 128, 130, 133, 157, 169.

14. "\$20.00 Lust", by Andrew Shaw, No. NB1546.

Central theme is prostitution, with a counterfeiting ring in the background. Murder and violence are overshadowed only by the heroine, "who had more than a feel for love."

Rape—14.

Fellatio and flagellation—73-74.

Descriptive intercourse—47-49 (three times with same girl), 80-81, 83, 99, 108, 150, 158, 160, 186.

15. "Convention Girl", by Don Elliott, No. NB1547.

The story of a convention call girl's exploits, with murder thrown in.

Descriptive passages:

Defloration—38.

Rape—74.

Flagellation—110.

Lesbianism—107, 148.

Descriptive intercourse—27, 33, 77, 100, 131, 143, 151.

16. "*The Isle of Sin*", by John Dexter. No. NB1549.

The central theme of this is sex by beatniks on a vacation island. Descriptive passages are on Pages 9, 23, 48, 49, 83 to 85, 121 and 122, 131 and 132, 177 to 179. Total pages 190.

17. "*Orgy Town*", by Will Newbury, No. NB1550.

While on a mission to rescue a wayward girl, for which he has been paid by sexual access to the sister, the central character visits teenage vice dens and takes part in orgies in the bushes, on the beaches and in bedrooms.

Descriptive passages:

Perfect figures, descriptive nudity—pages 30, 31, 40, 73, 136.

Descriptive intercourse—72, 124, 125, 181, 182.

Nymphomania—pages 72, 122.

18. "*Sex Spy*", by J. X. Williams, No. NB1552.

The story about a female spy in a Latin American county. Descriptive passages are at Pages 35, 38, 46 through 49, 62 to 64, 66 to 69 (attempted rape), 82 to 84, 97 to 98, 104 to 109, 120 to 123 (sadism and rape), 134 to 135, 143, 148 to 150, 165 to 166, 177 (lesbianism), and 190 to 192. Total pages, 192.

Sadism is herein graphically portrayed beginning at page 119:

"The eyes of the soldiers gleamed moist with lust as they watched Glory awaken. Glory knew she was nude, knew her moist intimate areas were fully exposed, but she did not care.

* * *

"Bols said. 'Are you awake, Senorita Carter? Ah, I see that you are. Will you answer a question or two?'"

...

"Bols leaned forward to await her reply. Glory spat directly in his face.

...

"Very well, Senorita Carter. Pepe, give her a taste. Arnolfo, you and Grigori hold her down."

...

"Again Glory snapped her head forward and spat at him. Bols raised a sleeve to wipe his cheek.

"That is your answer, is it?" he said in a velvet whisper. "Pepe? Burn her . . .!"

"Pepe extended the lighted twist of straw to touch Glory's breast. She screamed.

"Pepe stamped the twist under his boot, selected another and held it close to the lantern. His gross lips shone with saliva through the matted filth of his beard.

"Those soft lovely nipples," Bols said. "Imagine how they will look blackened and scarred. No man will want to fondle them or kiss them. Your name! Your real name!"

...

"Glory writhed, struggled to get free as the flame hovered close. It sent searing agony through her, agony that poured out of her lips in a long, shrill shriek of pain. She collapsed weakly between her captors, hoping they'd let her rest a moment.

"Let us try a more intimate area," came the voice of Bols. "Arnolfo . . . Grigori . . . hold her arms with one hand. Excellent. Ready, Pepe? Get the twist lighted. There. Now, gentlemen, a hand on the young lady's thighs. Pull them apart . . ."

"Oh, my God, my God, no!" Glory screamed. "You can't you wouldn't . . ."

"I will unless you tell me what I wish to know, Senorita."

"Oh, God, oh, God, no please, please don't . . ."

"Pepe?"

"No, no, don't burn me there, don't burn me there . . .
ARRRRRR . . ."

"The revolting stench of smoldering flesh gagged Glory, turned her sick and weak. The smell and the pain plunged her down, down, into black and bottomless oblivion."

"But once more she came awake, wishing for death now, wishing for release. Through the blur of her pain-dimmed vision she saw Bols' face like a phantom in a trick mirror, elongated and hideous, the mouth working in a mocking smile."

"You are a remarkable young woman. You have been trained. No ordinary American girl would withstand such pain without speaking. But we shall have plenty of time. Senorita, please pay attention!"

"A hand knotted in her hair, jerking her head up. Three stinging slaps brought her eyes flying open."

"Better," Bols purred. "Since our questioning will obviously take longer than I had planned, perhaps I should call a halt and give my faithful helpers a chance to appreciate your distinctive charms for themselves. Pepe? Shall you be first to invade the portals of joy?" Gazing up through a lock of hair falling across her forehead Glory could see the bearded Pepe shuffle forward along the truck bed, toying with his belt as he licked his lips. Bols picked up the lantern, held it high. It swayed back and forth with the rhythm of the truck bouncing over a bumpy road.

"Grigori, you and Arnolfo should assist our friend, to assure the young lady's cooperation. Be prompt, Pepe. We cannot have too many more miles to go."

"Glory tried to scream again, scream and clamp her thighs tight together as Pepe's nailed boot stamped cruelly between them and forced them apart. Then

he dropped to his knees, put one hand on each of Glory's knees, slowly wedged them wide.

"The other two soldiers dropped to a crouch, one on either side, holding her legs wide, keeping her shoulders pinned to the foully matted straw. Bols' twisted face retreated in her vision, a surrealistic nightmare under the swinging beam of the lantern."

"'Be quick,' he laughed, 'be quick, comrade Pepe. Your actions will arouse our brothers, who wait their turns. And do not be easy, comrade Pepe.' His voice quaked uncontrollably: 'Rape her!'

"Now Pepe's loathsome bearded face descended over Glory's. She writhed, tried to fight, but pain had taken its toll. In one final instant of agony Glory screamed Antonio Rey's name, but it came out a wordless syllable. With brutal strength, Pepe assaulted her. As his fellows began to cry their encouragement Glory's mind again went mercifully dark."

As is flagellation at page 156:

"Stretched on her belly on the floor, Glory saw his arm raise up. She raised her own hand protectively.

"'Antonio! In the name of God, darling . . ."

"Crack!

"Glory screamed and twitched across the floor. The whip had cut the straps of the slip, ripped the bodice to tatters. Her pulsing white breast heaved up into the light. A tracery of blood was cut across their upper surfaces.

"Glory moaned, rolled from side to side, digging her fingernails into her thighs to stifle the pain. The whip hissed along the floor as Antonio coiled it. His arm flashed up. His mouth contorted in rage:

"'You'll never use your body again. Never again . . ."

"Crack!

"The lash coiled around Glory's buttocks, tore free, cutting her slip to ribbons. It left another red

mark across her belly and the rounded bulges of her quivering buttocks.

"Glory tried to crawl away. The pain was too severe. She could not speak. Words choked in her throat. She waited the next blow, wishing it would strike her dead. Everything was finished now, destroyed. Feebly she pressed her hands over her loins, trying to protect herself. The whip hissed coiling . . .

"Crack!

"Crack!

"A long, piercing scream tore out of Glory's throat. She went scrabbling over the floor, her breasts criss-crossed with whip-marks. Bloodstained her nipples, trickled down her belly, marked her thighs and buttocks."

And desire for seduction at page 149:

"Darling . . . my darling . . . have me, my darling . . . I ache . . ."

"Querida, Antonio's voice whispered down the dream-wind, 'Queida, I want you so . . .'

"Don't make me wait. Antonio . . . give me your love . . . let me have your love . . . oh, please . . ."

"Yes, Querida, yes, I'll give it to you . . . let me be gentle as I give . . ."

"No, Antonio . . . oh, darling no. I have to love you hard, hard . . . please, Antonio . . . lover . . . it's like fire . . . I can't wait . . . please, sweetheart, give . . . ohhhhhhh! Oh, yes, yes, that's it, that's it, my darling, my lover, my darling . . ."

And sodomy beginning at page 105 through 109:

"Hurt me . . . hurt me, I don't care . . . just start . . . start . . . or . . ."

Bols arms went around her like a vise.

"Then you have been warned."

"That's it, yes . . . yes . . . oh, yes, that's wonderful, that feels . . . Bols! Bols, what are you . . ., no, Bols . . . no. I won't . . . not that . . . I won't let . . . Bols . . ."

"Glory's fists beat at him, hammered at him mercilessly. He pressed on, his strength overpowering. The spasm which seized Glory was an evil thing, foul and loathsome as Bols caressed her with never a trace of emotion on his stark, sweat-dripping face.

"Again Glory tried to struggle, but her balled fists beat ineffectually at his shoulders.

"'Bols . . . you mustn't . . . Bols . . . don't . . . don't . . . ah, God, Bols, stop, stop . . . stop . . . stop before you . . . agh!'"

"'Tell me to stop,' Bols snarled. 'Tell me you really want me to stop.'

"'Yes, . . . ah . . . ah . . . oh God . . . the hurt I can't bear . . . I . . . won't.'

"'Shall I stop?'"

Bols' voice came like thunder, mocking her, making her filthy, a degraded thing.

"'Shall I stop now, my darling Jean? Or shall I go on to the end? If you say stop . . .'

"'Yes you must . . . you . . . what's happening to me?'"

"'Do you want me to go on? Do you want me to go on, Jean? Do you? DO YOU?'"

And with terrible wanton abandon Glory opened her lips and screamed:

"'Yes . . . yes . . . yes . . . it's too late . . . go on! go on, go on!'"

* * *

Never in her life had Glory Hill felt so soiled, so thoroughly degraded.

"Bols left her sprawled naked. Distantly she heard his mocking laugh."

19. *"Trailer Trollop"*, by Andrew Shaw, No. NB1553.

This is the story of a group of females who operate a trailer-house of prostitution near an army camp.

Descriptive passages:

Perfect figures—7, 13, 15, 148.

Narcissism—5, 13, 14.

Flagellation—58, 127, 129.

Cunnilingus—105.

Fellatio—106.

Two men have intercourse at the same time with one woman, one in her vagina and one in her anus. (Both standing and prone)—175.

Incest—175, 177.

Lesbianism—15, 57, 60, 61, 140, 142, 151.

Descriptive intercourse—9, 10, 30, 35, 53, 54, 128.

20. *"Flesh Is My Undoing"*, by Clyde Allison, No. NB1555.

Surrounded by lust-driven females at a weekend sex party, the protagonist takes time to make love to all guests, who trade partners in the continuous game of musical bed-springs, while endeavoring to crack a sex-badger racket.

Descriptive passages:

Perfect figure—27, 99.

Descriptive intercourse—27, 28, 48-50, 57, 68, 79, 99, 142.

Nymphomania—62, 79, 148, 179.

Rape—185.

Sadism—162, 183, 185.

21. *"Sex Circus"*, by John Dexter, No. NB1556.

In his new position as circus roustabout the central character learns his duty consists primarily in serving as

a stud for the female performers, all of whom have voluptuous figures and insatiable sexual appetites.

Descriptive passages:

One man is raped and beaten by two homosexual brothers—123.

Descriptive intercourse—32, 33, 70, 71, 83, 84, 132, 148, 150.

Sadism—92.

22. "*Malay Mistress*", by Clyde Allison, No. NB1557.

American soldier of fortune type enjoys a Chinese mistress, an oriental nurse and a French female smuggler. Mistress saves him from smuggler and they live happily ever after.

Heterosexual activity, including intercourse, described—7, 10, 16, 24-25, 30, 34, 39, 41, 48, 55, 57, 64, 84, 100, 119, 124, 132, 139, 164, 172, 183.

Man hires two young prostitutes to strip and lash each other with whips—83.

23. "*The Sinning Season*", by Tony Calvano, No. NB1561.

Johnny's north woods resort is invaded by hoodlums who bring along perverted girls in order to set up a bordello there. He kills hoods, saves his girl, who has been captured, and marries her.

Descriptive passages:

Defloration—6, 19.

Sadism—103, 106, 145.

Masochism—131.

Descriptive Intercourse—14, 17-19, 21-22, 44-46, 50-55, 75-80, 94-96, 113-115, 128-132, 137-138.

24. "*Sin Song*", by John Dexter, NB1562.

In this story of a two-dollar-a-fall prostitute's rise to become a "Sexpot" rock and roll singer, sexual activity is

accepted by the characters as being as commonplace as sitting down. Love is not an issue; neither is possible pregnancy. Sexual exhaustion is unheard of as the supersexed males, the nymphomaniac females, all with perfect, overdeveloped figures and glands, perform from various positions with little emotion except lust.

Descriptive passages:

Perfect figures—5, 15, 83, 112, 117.

Supersexed males—11, 21, 75, 113.

Nymphomania—18-19, 37, 112, 118.

Sadism—20, 92, 108, 182.

Homosexuality—116.

25. "Passion Slaves", by Andrew Shaw, No. NB1563.

This is a story of a teenage girl who flees the passion of her school teacher to become a prostitute in a large city. The girl, equipped with overdeveloped figure and drives, enjoys sexual activity so much she carries on her wanton adventures for either pay or play.

Descriptive passages:

Perfect figure—6, 14, 17, 22, 81, 93, 122.

Descriptive intercourse—22, 32, 96, 111, 112-113.

Nymphomania—13, 17, 21, 31, 84, 94, 126, 142, 149.

Incest—81.

Sadism—115.

Lesbianism—152.

Rape—152-153.

26. "The Sinful Ones", by Don Elliott, No. NB1564.

A young American goes to Rome to study architecture but learns about sex, continental style. His affair with a countess is shaken when he learns she is a lesbian.

Descriptive passages:

Twelve-year old girl is deflowered by her uncle—64.

Sadism—162.

Lesbianism—159-161, 166.

Descriptive intercourse—26-27, 37-38, 61-62, 66, 67, 98-102, 134, 175, 189.

27. "Lover", by Andrew Shaw, No. NB1551.

This story is concerned with a 19-year old male whore who develops his profession in the slums of New York and rises to the penthouses of Fifth Avenue. Sometimes he is paid for a brief house call and on other occasions makes a handsome fee by servicing several lusty females during all-night orgies.

Descriptive passages:

Perfect figures—16, 17, 35, 37, 68, 102, 144.

Descriptive nudity—18, 19, 20.

Lack of love—16, 20, 21, 24.

Descriptive intercourse—21, 23, 39, 40, 71, 102, 104, 143.

Supersexed male—24, 180.

Defloration—24, 74.

Statutory rape—72-73.

Man watches as two lesbians perform cunnilingus on each other—113-114.

Several couples watch stag movie while having an orgy—171, 180.

Homosexuality—189.

Cunnilingus—178, 179.

28. "Love Nest", by Tony Calvano, No. NB1559.

Married to a frigid woman, the hero seeks sexual satisfaction with other women.

Descriptive passages:

Perfect figure—12, 57, 79.

Descriptive intercourse—22-34, 39, 49, 61, 65, 70-72, 121, 138, 152, 176, 180.

29. "Passion Trap", by Don Elliott, No. NB1521R.

A college professor in love with a highly educated but frigid girl must sate his lust on a waitress. The frigid girl finally overcomes her condition in an illicit connection with the professor.

Defloration of 14-year old girl by her uncle—48.

Heterosexual activity, including intercourse—17, 38-42, 72-78, 83-86, 108, 121-122, 134-135, 172-173, 174, 189-191.

30. "Sin Cruise", by Don Elliott, No. NB1554.

Bachelor goes on Caribbean cruise with superabundance of willing females aboard. His sexual activities culminate in three-way relationship with two sisters. In the end, one withdraws and he marries the other.

Descriptive passages:

Two sisters and two men have alternating intercourse in one bed—57-59.

Defloration—39-40.

Heterosexual activity, including intercourse—25-28, 35-36, 54-56, 57-59, 75, 98-100, 108, 190.

One man alternates intercourse with two sisters—134-139, 160-164.

31. "Seeds of Sin", by Louis Lorraine, No. NB1560.

A college professor is making a survey of women's sex habits. He makes up for the frigidity of his wife by intercourse with the women he interviews.

Descriptive passages:

Rape—139.

Perversion—114.

Two nymphomaniacs rape a man—167.

Descriptive intercourse—18, 21, 59, 70, 103, 106, 118, 186.